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| MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE | | EFFECTIVE DATE 06/06/2005 | NUMBER 02.01.102 |
| SUBJECT LITIGATION - DEPARTMENT AND EMPLOYEE RESPONSIBILITIES | | SUPERSEDES PD 02.01.102 (08/27/01) | |
| | | AUTHORITY MCL 691.1408; 791.203; Civil Service Commission Rule 2-19 ACA STANDARDS 4-4023; 4-4041; 2-CO-1A-28; 3-3031; 3-3046; 3-ACRS-1A-21; 3-ACRS-1B-14; 3-3124 | |
| | | PAGE 1 OF 4 | |

POLICY STATEMENT:

Civil litigation against the Department and/or its employees as a result of employment with the Department shall be handled as set forth in this policy.

POLICY:

- A. Each Correctional Facilities Administration (CFA) institution, CFA and Field Operations Administration (FOA) Regional Office, Regional Human Resource Office, Regional Health Care Office, Health Care Office for the Jackson Medical Complex, and any Bureau or Office, as necessary, shall have an employee designated as the local litigation coordinator. Staff shall direct all questions relating to civil litigation against the Department and/or its employees as a result of employment with the Department to the local litigation coordinator, who shall refer questions, as necessary, to the Litigation and Freedom of Information Act (FOIA) Section, Office of Audit, Internal Affairs and Litigation, for response.
- B. The Manager of the Litigation and FOIA Section shall maintain a Litigation Manual to assist employees in responding to litigation. The Manual shall be provided to all local litigation coordinators.
- C. The Department's computerized litigation tracking system shall be used to record relevant information on all civil litigation served on the Department and its employees. The Manager of the Litigation and FOIA Section shall maintain a manual providing instruction in the use of the tracking system. The manual shall be provided to all local litigation coordinators.

LAWSUITS

- D. Any document received by an employee that appears to be a lawsuit or any other legal document involving the Department of Corrections or its employees shall be forwarded to the local litigation coordinator within one business day after receipt; Central Office employees who have no local litigation coordinator in their Bureau/Office shall forward the document to the Litigation and FOIA Section within one business day after receipt. This does not apply to legal documents routinely received by the Department, such as a Judgment of Sentence, writ, or a court order for payment of restitution, filing fees or other court costs. If the document is a civil lawsuit naming the employee as a defendant, the local litigation coordinator or, for Central Office employees who have no local litigation coordinator, the Manager of the Litigation and FOIA Section or designee shall immediately notify the employee that s/he may request representation by the Department of Attorney General. However, contractual employees and volunteers are not entitled to Department of Attorney General representation and are to be immediately advised of this by the local litigation coordinator.
- E. Local litigation coordinators shall not accept lawsuits for former employees or for employees no longer working at the Department location where service is being attempted, unless otherwise directed by the Manager of the Litigation and FOIA Section or designee. The local litigation coordinator shall return such lawsuits to the sender explaining why service cannot be accepted. If the employee is working at a different Department location, the local litigation coordinator shall inform the sender of that location.
- F. If the defendant employee notifies the local litigation coordinator that s/he wants to request representation, the local litigation coordinator shall provide the employee with the appropriate form letter

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|-----------------------------------|------------------------------|---------------------|-------------|
| DOCUMENT TYPE POLICY DIRECTIVE | EFFECTIVE DATE 06/06/2005 | NUMBER 02.01.102 | PAGE 2 OF 4 |
|-----------------------------------|------------------------------|---------------------|-------------|

developed by the Manager of the Litigation and FOIA Section. If the defendant employee is a Central Office employee with no local litigation coordinator, the form letter may be obtained from the Litigation and FOIA Section. The form letter is to be signed by the defendant employee and approved by the appropriate supervising Administrator (i.e., Warden, CFA Regional Prison Administrator, FOA Regional Administrator, Regional Human Resource Officer, Regional Health Administrator, Administrator for the Jackson Medical Complex, or appropriate Deputy Director or designee for Central Office employees) unless otherwise directed by the Manager of the Litigation and FOIA Section. If the approving authority does not think representation is warranted, the approving authority shall immediately contact the Manager of the Litigation and FOIA Section by telephone instead of signing the request.

- G. The Manager of the Litigation and FOIA Section shall be immediately contacted if an employee being sued was disciplined, counseled or investigated as a result of his/her actions which are a basis for the lawsuit, even if representation is recommended by the approving authority. The Director or designee has the final authority as to whether a request for Department of Attorney General representation will be approved.
- H. An employee may retain private counsel in lieu of Department of Attorney General representation at any time. However, in such cases, the Department will not reimburse the employee for legal fees or indemnify the employee if a judgment is entered against the employee.
- I. Department of Attorney General representation will be approved for employees, including ex-employees, if it is determined that the employee was acting in the course of employment at the time of the alleged conduct and there was a reasonable basis to believe the conduct was within the scope of the employee's authority. If the Director or designee authorizes representation but the Department of Attorney General cannot provide representation, the Department and the Department of Attorney General will contract with a private attorney to provide legal services to the employee. If it is subsequently determined that the employee or ex-employee was not acting in the course of employment or there was not a reasonable basis to believe the conduct was within the scope of his/her authority, the Director may request that representation be withdrawn.
- J. If representation is denied, the employee shall be contacted as soon as possible by certified mail to ensure the employee has adequate time to retain private counsel. If the employee disagrees with the Department's denial, s/he may request reconsideration by the Director through the Litigation and FOIA Section. The request and response must be made as soon as possible to ensure the employee has adequate time to retain private counsel if necessary. If reconsideration is denied, the employee may file a grievance in accordance with Civil Service grievance procedures or appropriate collective bargaining unit agreement.
- K. All employees must cooperate with the Office of Audit, Internal Affairs and Litigation and the Department of Attorney General in the defense of any suit against the Department or its employees. This includes providing affidavits, documents and information that have been requested by or on behalf of the Department of Attorney General. A copy of any information or affidavit which is sent directly to the Department of Attorney General shall be sent to the Litigation and FOIA Section.
- L. If an employee fails to provide that which has been requested, disciplinary action may result. In addition, failure to cooperate and provide requested information may result in withdrawal of representation by the Department of Attorney General. If representation is withdrawn, notice and the opportunity to request reconsideration shall be provided to the employee consistent with Paragraph J.
- M. The Director or designee shall make all decisions regarding settlement of lawsuits for which representation was approved. Any request for settlement received by an employee or local litigation coordinator shall be immediately brought to the attention of the Manager of the Litigation and FOIA Section via the local litigation coordinator. No employee or local litigation coordinator shall discuss settlement with plaintiff or plaintiff's attorney or with the Department of Attorney General.

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|-----------------------------------|------------------------------|---------------------|-------------|
| DOCUMENT TYPE POLICY DIRECTIVE | EFFECTIVE DATE 06/06/2005 | NUMBER 02.01.102 | PAGE 3 OF 4 |
|-----------------------------------|------------------------------|---------------------|-------------|

COURT ORDERS

- N. Court orders in habeas corpus actions challenging a prisoner's conviction shall be handled directly by the appropriate Record Office; however, if the order requires the prisoner's release or any other action by the Department, Record Office staff shall contact the Records Administrator, Administration and Programs, for instructions on how to proceed. The Records Administrator shall contact the Manager of the Litigation and FOIA Section for direction, as necessary.
- O. Court orders regarding the payment of fines, fees, or other costs in a lawsuit against the Department or its employees shall be handled directly by the business office.
- P. Any other court order regarding a lawsuit against the Department or its employees received from a court, the Department of Attorney General, a plaintiff or the plaintiff's attorney shall immediately be brought to the attention of the Manager of the Litigation and FOIA Section. No action shall be taken on any court order without direction from the Office of Audit, Internal Affairs and Litigation. In most cases, instructions shall be provided in writing to the Department staff person responsible for implementing the order. The Manager of the Litigation and FOIA Section shall maintain a follow-up system to ensure that court orders from litigation filed against the MDOC or its employees are implemented.

SUBPOENAS

- Q. Any subpoena to appear or subpoena to produce documents received by an employee shall be brought to the attention of the Litigation and FOIA Section via the local litigation coordinator prior to compliance to receive instructions on how to proceed. The subpoena shall be complied with in accordance with the instructions provided by the Litigation and FOIA Section. Prisoners shall not be released or transported pursuant to a subpoena.

PRISONER DEPOSITIONS

- R. The Department of Attorney General or the Litigation and FOIA Section will contact the local litigation coordinator for a prisoner deposition regarding any lawsuit against the Department or its employees.
- S. Pursuant to both Michigan and federal court rules, a court order must be obtained by the party requesting a prisoner deposition, setting forth the terms of the deposition. This applies to all lawsuits, including those that are not against the Department or its employees. Any questions regarding the need for court orders in prisoner depositions shall be directed to the Litigation and FOIA Section.

WRITS

- T. A writ of habeas corpus is generally required to transport any prisoner to court; however, a writ is not required to transport a prisoner to appear in a criminal case prosecuted on behalf of the Department when custody of the prisoner is not surrendered to another agency/jurisdiction or as otherwise approved by the CFA or FOA Deputy Director, as appropriate, or designee. Writs may be sent directly from the court, the Department of Attorney General or from the Litigation and FOIA Section. Questions on the need for or appropriateness of a writ may be directed to the Litigation and FOIA Section.

COURT OF CLAIMS - NOTICE OF INTENTION TO FILE A CLAIM

- U. The Court of Claims Act requires that a Notice of Intention to File a Claim be filed with the Court of Claims prior to filing the actual complaint. Any employee receiving a Notice of Intention to File a Claim shall forward the document through the local litigation coordinator to the Litigation and FOIA Section.

SERVICE FOR DIRECTOR/DEPARTMENT

- V. The Administrator of the Office of Audit, Internal Affairs and Litigation, the Manager of the Litigation and FOIA Section, and designees are the only people authorized to accept service of a lawsuit on behalf of

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|-----------------------------------|------------------------------|---------------------|-------------|
| DOCUMENT TYPE POLICY DIRECTIVE | EFFECTIVE DATE 06/06/2005 | NUMBER 02.01.102 | PAGE 4 OF 4 |
|-----------------------------------|------------------------------|---------------------|-------------|

the Director or the Department. Any other employee who receives such a lawsuit shall return it to the sender with an explanation that the employee is not authorized to accept service.

CONTACT WITH PLAINTIFF'S ATTORNEY

- W. Any inquiries made by an attorney who is representing someone in a lawsuit against the Department or its employees shall be directed to the Department of Attorney General. At no time should employees provide information or documents to plaintiff or plaintiff's attorney, including issues regarding settlement.

OPERATING PROCEDURE

- X. Wardens, the FOA Deputy Director, Regional Prison Administrators, the Administrator of the Bureau of Human Resources and the Administrator of the Bureau of Health Care Services shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive; this shall be completed within 60 calendar days after the effective date of the policy directive. This requirement includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Facility procedures shall not conflict with procedures issued by the Director or Deputy Director.

AUDIT ELEMENTS

- Y. A Primary Audit Elements List has been developed and will be provided to Wardens, CFA Regional Prison Administrators, FOA Regional Administrators, Regional Human Resource Offices, Regional Health Care Offices, the Health Care Office for the Jackson Medical Complex and the Administrator of the Office of Audit, Internal Affairs and Litigation to assist with self audit of this policy, pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

PLC:OPH:05/10/05